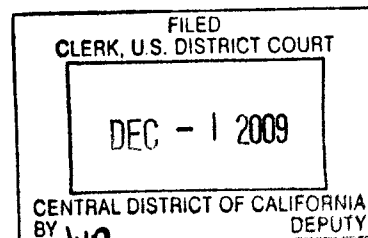


1 Lawrence Brewster
2 Regional Solicitor
3 **Daniel J. Chasek**, (CSBN #186968)
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12 Attorneys for the Plaintiff

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 **HILDA L. SOLIS**,
16 Secretary of Labor,
17 United States Department of Labor,

18 Plaintiff,

19 v.

20 **J.I. Gandara Transport, Inc.**, a California
21 Corporation; **J. Isabel Gandara**, Individually
22 and as Managing Agent of the Corporate De-
23 fendant

24 Defendants.

Case No. 09-07395 MAN

CONSENT JUDGMENT

25 Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor
26 ("Secretary"), and defendants J.I. Gandara Transport, Inc., a California corporation, and
27 J. Isabel Gandara, individually and as managing agent of the corporate defendant (col-
28 lectively, "defendants"), have agreed to resolve the matters in controversy in this civil
action and consent to the entry of this Consent Judgment in accordance herewith:

1 A. The Secretary has filed a Complaint alleging that Defendants violated pro-
2 visions of Sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as
3 amended ("FLSA"), 29 U.S.C. §§ 215(a)(2) and 215(a)(5).

4 B. Defendants acknowledge receipt of a copy of the Secretary's Complaint.

5 C. Defendants waive issuance and service of process and waive answer and
6 any defenses to the Secretary's Complaint.

7 D. The Secretary and Defendants waive Findings of Fact and Conclusions of
8 Law, and agree to the entry of this Consent Judgment in settlement of this action, with-
9 out further contest.

10 E. Defendants admit that the Court has jurisdiction over the parties and subject
11 matter of this civil action and that venue lies in the Central District of California.

12 It is therefore, upon motion of the attorneys for the Secretary, and for cause
13 shown,

14 ORDERED, ADJUDGED, AND DECREED that the Defendants, their officers,
15 agents, servants, and employees and those persons in active concert or participation with
16 them who receive actual notice of this order (by personal service or otherwise) be, and
17 they hereby are, permanently enjoined and restrained from violating the provisions of
18 Sections 15(a)(2) and 15(a)(5) of the FLSA, 29 U.S.C. §§215(a)(2) and 215(a)(5), in any
19 of the following manners:

20 1. Defendants shall not, contrary to FLSA § 7, 29 U.S.C. § 207, employ any em-
21 ployee who in any workweek is engaged in commerce, within the meaning of the FLSA,
22 or is employed in an enterprise engaged in commerce or in the production of goods for
23 commerce, within the meaning of FLSA § 3(s), for any workweek longer than 40 hours
24 unless such employee receives compensation for his or her employment in excess of 40
25 hours in such workweek at a rate not less than one and one-half times the regular rate at
26 which he or she is employed.

27 2. Defendants shall not fail to make, keep, make available to authorized agents of
28 the Secretary for inspection, transcription, and/or copying, upon their demand for such

1 access, and preserve records of employees and of the wages, hours, and other conditions
2 and practices of employment maintained, as prescribed by regulations issued, and from
3 time to time amended, pursuant to FLSA §§ 11(c) and 15(a)(5), 29 U.S.C. §§ 211(c) and
4 215(a)(5) and the implementing regulations found in Title 29, Code of Federal Regula-
5 tions, Part 516.

6 3. Defendants, jointly and severally, shall not continue to withhold the payment
7 of \$84,474.25 in overtime pay hereby found to be due under the FLSA to 33 employees,
8 as a result of their employment by Defendants during the period of January 24, 2006
9 through January 23, 2009 as set forth in the attached Exhibit 1, showing the name of
10 each employee and listing on the same line the gross backwage amount due the em-
11 ployee and the period covered by the Consent Judgment.

12 4. Defendants shall pay the backwages, plus 3% annual interest on the out-
13 standing balance starting from November 10, 2009, when Defendants shall pay an initial
14 payment of \$23,789.67, until the backwages required under this Judgment are paid in
15 full, as set forth in paragraph 5 below, and as set forth in attached Exhibit 2. Each pay-
16 ment shall be made by a certified or cashier's check or money order with the firm name
17 and "Net BWs + Interest" written on each, payable to the order of the "Wage & Hour
18 Div., Labor," and delivered to the U.S. Department of Labor, Wage and Hour Division,
19 915 Wilshire Blvd. Suite 960, Los Angeles, CA 90017, on or before the date the pay-
20 ment is due.

21 5. Defendants shall deliver to the Wage and Hour Division, United States De-
22 partment of Labor, 915 Wilshire Blvd. Suite 960, Los Angeles, CA, 90017, the follow-
23 ing:

24 a. On or before November 10, 2009, a schedule in duplicate bearing the firm name
25 (that is highlighted in the caption of this Judgment), employer identification number(s),
26 address, and phone number of the defendants and showing the name, last known (home)
27 address, social security number, gross backwage amount for each person listed in the at-
28 tached Exhibit 1, the amounts of legal deductions for social security and withholding

1 taxes thereon (that the defendants shall pay directly to the federal and state agencies enti-
2 tled thereto), and the resulting net backwage amounts for each person listed in the at-
3 tached Exhibit 1.

4 b. On or before November 10, 2009, and again on November 15, 2009 or before
5 the 15th day of every month thereafter until the backwage recovery provisions of this
6 Judgment have been satisfied in full for each person who is listed in the attached Exhibit
7 1, a certified or cashier's check or money order with the firm name and "Net BWs + In-
8 terest" written on each, payable to the order of the "Wage & Hour Div., Labor," in the
9 amounts reflected on Exhibit 2.

10 c. In the event of any default in the timely making of any payment due hereunder,
11 the full gross amount (under the backwage provisions of this Judgment) that then re-
12 mains unpaid (plus post-judgment interest, from the date of this Judgment until the full
13 amount is paid in full, at the rate of 10 percent per annum on the full balance outstanding
14 from time to time, from the date of this Judgment until this Judgment is paid in full)
15 shall become due and payable upon sending by ordinary mail a written demand to the
16 last business address of the Defendants known to the plaintiff; the manner of the imme-
17 diate payment shall in the case of the back wages be a certified or cashier's check or
18 money order with the firm name and civil action number from the caption on the first
19 page of this Judgment and "net back wages" written thereon payable to the order of the
20 "Wage & Hour Div., Labor," and shall in the case of the interest on the back wages be a
21 separate certified or cashier's check or money order with the firm name and civil action
22 number and "backwage interest" written thereon payable to the order of the "Wage &
23 Hour Div., Labor."

24 d. The Secretary shall allocate and distribute the remittances, or the proceeds
25 thereof, to the persons named in the attached Exhibit 1, or to their estates if that be nec-
26 essary, in her sole discretion, and any money not so paid within a period of three years
27 from the date of its receipt, because of an inability to locate the proper persons or be-
28 cause of their refusal to accept it, shall be then deposited in the Treasury of the United

1 States, as miscellaneous receipts, pursuant to 29 U.S.C. § 216(c).

2 e. On or before October 15, 2011, and again on or before the 15th day of each of
3 the four months thereafter until the civil money penalties for alleged overtime pay viola-
4 tions of this Judgment are satisfied in full, a certified or cashier's check or money order
5 with the firm name and "OT/CMP" written thereon payable to the order of "Wage &
6 Hour Div., Labor," in the amount of \$2,687.65 or \$2,687.66 in payment of the civil
7 money penalty assessed against the Defendants for alleged overtime pay violations, as
8 reflected in Exhibit 3; and it is further

9 6. ORDERED that the filing, pursuit, and/or resolution of this proceeding with
10 the entry of this Judgment shall not act as or be asserted as a bar to any action under
11 FLSA § 16(b), 29 U.S.C. § 216(b), as to any employee not named on the attached Ex-
12 hibit 1 nor as to any employee named on the attached Exhibit 1 for any period not speci-
13 fied therein; and, it is further

14 7. ORDERED that each party shall bear its own fees and other expenses incurred
15 by such party in connection with any stage of this proceeding, including but not limited
16 to attorneys' fees, which may be available under the Equal Access to Justice Act, as
17 amended; and, it is further

18 8. ORDERED that this Court shall retain jurisdiction of this action for purposes
19 of enforcing compliance with the terms of this Consent Judgment.

20 Dated: December 1, 2009.

Margaret A. Nagle
~~U.S. DISTRICT COURT JUDGE~~

Margaret A. Nagle
U.S. Magistrate Judge

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2 For the Defendants:

3
4 Each Defendant hereby appears, waives any
5 defense herein, consents to the entry of
6 this Judgment, and waives notice by the
Clerk of Court:

7 For: J.I. Gandara Transport, Inc.

8
9 By: _____
Authorized Agent

Date

10
11 Its: President

12
13 _____
14 J. Isabel Gandara

Date

15
16 For the plaintiff:

17 CAROL DEDEO
18 Deputy Solicitor for National Operations

19 LAWRENCE BREWSTER
20 Regional Solicitor

21 *Daniel J. Chasek*
22 DANIEL J. CHASEK
23 Associate Regional Solicitor
24 Attorneys for the Plaintiff

10/8/09
Date

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Exhibit 1

<u>NAMES</u>	<u>PERIODS COVERED HEREIN</u>	<u>AMOUNTS DUE</u>
ALCARAZ LAZARO	1/29/2006 12/21/2008	9324.98
ARAUJO MILTON R	9/3/2006 10/21/2007	4306.73
CARDENAS RUDY B	10/14/2007 12/21/2008	1900.22
CARILLO ALEJANDRO	1/29/2006 3/19/2006	462.87
CASTILLO JESUS V	7/1/2007 12/21/2008	5746.02
CASTRO MARCO	1/21/2007 11/11/2007	1640.63
CISNEROS GERARDO	10/5/2008 10/19/2008	285.95
DE DE'LOERA JOSE	1/29/2006 10/12/2008	6986.76
DELGADO CARLOS H	5/25/2008 11/9/2008	2014.16
FLORES RITO RUBIO	1/29/2006 3/5/2006	147.28
GOMEZ RAYMUNDO	1/7/2007 1/28/2007	375.93
GONZALEZ FRANK	10/7/2007 9/14/2008	2859.48
GUDINO ALONSO M	3/12/2006 12/14/2008	7159.38
GUDINO JOSE	1/29/2006 11/19/2006	1891.74
GUTIERREZ RAMIRO P	1/29/2006 12/10/2006	1986.5
IGLESIAS JOEL	6/22/2008 12/21/2008	2915.45
MARTINEZ ELMER	7/1/2007 10/19/2008	5505.28
ELBER		
MASARIEGOS RODOLFO	12/10/2006 12/10/2006	33.61
FRANCISCO		
MELENDEZ A	2/12/2006 10/8/2006	1150.67
NAVARRETE		
APARICIO JOAQUIN	7/1/2007 12/21/2008	2744.25
OCHOA LUIS E	2/26/2006 3/12/2006	189.92
OSTORGA ARNOLDO A	7/22/2007 10/12/2008	3527.16

1	PEREZ	FROYLAN	3/19/2006	11/11/2007	3264.34
2	POLIO	EDWIN A	10/22/2006	12/24/2006	672.51
3		YOHALMO			
4	QUEZADA	A	12/17/2006	5/11/2008	3909.45
5	RAMIREZ	MOISES	9/21/2008	12/21/2008	1267.09
6	ROCHA	ANTONIO	12/2/2007	12/21/2008	2991.43
7	RODRIGUEZ	BENITO	1/7/2007	1/7/2007	50.67
8	ROSALES	SOCORRO	7/8/2007	6/8/2008	3988.56
9	SALAZAR	NOEL	12/31/2006	10/12/2008	4634.62
10	SOTO	RONY	1/14/2007	7/22/2007	261.14
11	TABBI	JOSEPH M	9/14/2008	9/21/2008	80.2
12	VALDEZ	RUDY A	10/7/2007	10/21/2007	199.27

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Exhibit 2

Payment No.	Date Due	Amount Due	Interest Due	Total Due
Down Payment	11/10/2009	\$23,789.67	0	\$23,789.67
1	11/15/2009	\$2,528.52	\$12.80	\$2,541.32
2	12/15/2009	\$2,528.52	\$6.47	\$2,534.99
3	1/15/2010	\$2,528.52	\$53.85	\$2,582.37
4	2/15/2010	\$2,528.52	\$11.73	\$2,540.25
5	3/15/2010	\$2,528.52	\$46.21	\$2,574.73
6	4/15/2010	\$2,528.52	\$7.25	\$2,535.77
7	5/15/2010	\$2,528.52	\$76.30	\$2,604.82
8	6/15/2010	\$2,528.52	\$83.56	\$2,612.08
9	7/15/2010	\$2,528.52	\$8.82	\$2,537.34
10	8/15/2010	\$2,528.52	\$118.37	\$2,646.89
11	9/15/2010	\$2,528.52	\$7.77	\$2,536.29
12	10/15/2010	\$2,528.52	\$173.83	\$2,702.35
13	11/15/2010	\$2,528.52	\$9.49	\$2,538.01
14	12/15/2010	\$2,528.52	\$195.85	\$2,724.37
15	1/15/2011	\$2,528.52	\$10.61	\$2,539.13
16	2/15/2011	\$2,528.52	\$114.06	\$2,642.58
17	3/15/2011	\$2,528.52	\$174.34	\$2,702.86
18	4/15/2011	\$2,528.52	\$8.48	\$2,537.00
19	5/15/2011	\$2,528.52	\$169.70	\$2,698.22
20	6/15/2011	\$2,528.52	\$147.63	\$2,676.15
21	7/15/2011	\$2,528.52	\$162.53	\$2,691.05
22	8/15/2011	\$2,528.52	\$6.64	\$2,535.16
23	9/15/2011	\$2,528.52	\$283.77	\$2,812.29
24	10/15/2011	\$2,528.62	\$6.32	\$2,534.94

Exhibit 3**Civil Money Penalties**

Date Due	Principle Due	Interest Due	Total Due
10/15/2011	\$ 2,660.94	\$ 26.71	\$ 2,687.65
11/15/2011	\$ 2,667.59	\$ 20.06	\$ 2,687.65
12/15/2011	\$ 2,674.26	\$ 13.39	\$ 2,687.65
1/15/2011	\$ 2,680.96	\$ 6.70	\$ 2,687.66
Totals:	\$10,683.75	\$66.86	\$10,750.61